

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Branler Enterprises, Inc.)	
	Ward 072, Block 047, Parcel A00005)	Shelby County
	Residential Property)	
	Tax Year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$9,200	\$80,400	\$89,600	\$22,400

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 7, 2006 in Memphis, Tennessee. In attendance at the hearing were Gregory Brannick, the appellant, and Shelby County Property Assessor's representatives John Zelinka, Esq. and Jonathan Jackson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 2331 Whitney in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$70,000. In support of this position, the taxpayer argued that the 2005 countywide reappraisal program caused the appraisal of subject property to increase excessively. In addition, Mr. Brannick testified that he did not receive a single offer when he listed subject property for sale at \$76,500 from October 19, 2005 – April 19, 2006. Finally, the taxpayer introduced various sales and listings in support of his contention of value.

The assessor contended that subject property should be valued at \$89,600. In support of this position, five comparable sales were introduced into evidence. Mr. Jackson maintained that the current appraisal of \$89,600 falls squarely within the value range of \$85,500 - \$97,000 established by the comparables.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$89,600 as contended by the assessor of property.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

The administrative judge finds that January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds that events occurring after January 1, 2005 are therefore not normally relevant for tax year 2005.¹ Accordingly, the administrative judge finds that Mr. Brannick's listing of subject property from October 19, 2005 – April 19, 2006 is not relevant. Moreover, the Assessment Appeals Commission ruled in *Leo Dickerson (Airways Apartments)* (Madison Co., Tax Year 1989) that evidence of an unanswered asking price does not constitute a sales comparison approach.

The administrative judge finds that virtually all of the sales and listings introduced by the taxpayer occurred after January 1, 2005 and are therefore irrelevant. Moreover, the sales were not adjusted. The administrative judge finds that the procedure typically followed in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

¹ The events would be relevant for tax year 2006, however, if they occurred during calendar year 2005.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then *adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable*. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.
5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001).

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$9,200	\$80,400	\$89,600	\$22,400

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

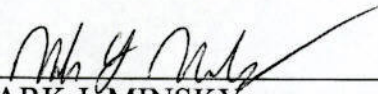
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of June, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Gregory Brannick
Tameaka Stanton-Riley, Appeals Manager